

**Motion and Cross-Motion Hearing Date: December 10, 2014 at 10:00 a.m. (EST)**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re: : Chapter 11  
: :  
LEHMAN BROTHERS HOLDINGS INC., *et al.*, : Case No. 08-13555 (SCC)  
: :  
Debtors. : (Jointly Administered)  
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**Supplement to Motion of RMBS Trustees  
To Estimate The RMBS Claims Using Statistical Sampling**

Franklin H. Top III (admitted *pro hac vice*)  
Scott A. Lewis (admitted *pro hac vice*)  
CHAPMAN AND CUTLER LLP  
111 West Monroe Street  
Chicago, Illinois 60603  
Telephone: (312) 845-3000

*Counsel for U.S. Bank National Association,  
solely in its capacity as Indenture Trustee for  
Certain Mortgage-Backed Securities Trusts*

John C. Weitnauer (admitted *pro hac vice*)  
Grant T. Stein (admitted *pro hac vice*)  
ALSTON & BIRD LLP  
1201 West Peachtree Street  
Atlanta, Georgia 30309  
Telephone: (404) 881-7000

*Counsel for Wilmington Trust Company and  
Wilmington Trust, National Association, solely  
in their respective capacities as Trustee for  
Certain Mortgage-Backed Securities Trusts*

M. William Munno  
SEWARD & KISSEL LLP  
One Battery Park Plaza  
New York, New York 10004  
Telephone: (212) 574-1587

*Counsel for Law Debenture Trust Company of  
New York, solely in its capacity as Separate  
Trustee for Certain Mortgage-Backed  
Securities Trusts*

Richard C. Pedone (admitted *pro hac vice*)  
Christopher Desiderio  
NIXON PEABODY LLP  
437 Madison Avenue  
New York, New York 10022  
Telephone: (212) 940-3085

*Counsel for Deutsche Bank National Trust  
Company, solely in its capacity as Trustee for  
Certain Mortgage-Backed Securities Trusts*

The RMBS Trustees submit this Supplement to their Motion to (i) Increase the Reserve to \$12.143 Billion and (ii) Estimate and Allow Their Claims for Covered Loans at \$12.143 Billion Pursuant to Section 502(c) of the Bankruptcy Code (the “*Motion*”), ECF No. 46078. In support of this Supplement, the claimants submit as Exhibit A to this Supplement, the Declaration of Scott A. Lewis (the “*Lewis Declaration*”) and exhibits attached thereto, and respectfully represent as follows:

1. In the Debtors’ Reply Brief (ECF No. 47185), the Debtors asserted that Judge Baer’s ruling in *MASTR Adjustable Rate Mortgage Trust 2006 OA2 v. UBS Real Estate Securities, Inc.*, Case No. 12-cv-07322 (S.D.N.Y. Apr. 1, 2013) (“*MASTR*”), and other cases cited by the RMBS Trustees, including *Home Equity Mortgage Trust Series v. DLJ Mortgage Capital, Inc.*, No. 156016/2012, NYSCEF No. 236 at 1 (N.Y. Sup. Ct. Nov. 19, 2013) (“*Home Equity*”), do not support sampling because the cases involved and/or relied on authority from cases concerning monoline insurers.<sup>1</sup> (*Debtors’ Reply Br.* at ¶¶ 39-41 & n.10.)

2. Quizzically, Debtors argue that *MASTR* is inapposite because the “one-line order” of the court was issued when a monoline insurer, Assured Guaranty Municipal Corporation, was also involved in the case (*Debtors’ Reply Br.* at ¶ 40 n.10.) However, the letter briefs submitted by the parties contradict the Debtors’ argument and make clear that Judge Baer’s order allowing sampling applied to the three trusts asserting put-back claims in that case. Further, in *Home Equity*, the court relied on Judge Baer’s ruling in *MASTR* to allow the plaintiff-trusts to use sampling to support their repurchase, or put-back, claims. The Debtors’ assertions are not supported by the orders of the courts in both *MASTR* and *Home Equity*.

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<sup>1</sup> In *MASTR*, the Court issued its ruling in an endorsed letter, whereby Judge Baer permitted sampling by the three trust-plaintiffs against the RMBS sponsor after the parties submitted letter briefs. (*See* RMBS Trustees’ Reply at ¶ 37 n.29 & Ex. 2.) In *Home Equity*, the court approved the plaintiff-trusts’ use of sampling to “prove liability and damages” on all claims, including repurchase (or “put-back”) claims against the RMBS sponsor that had purchased and securitized loans from third-party mortgage originators. (*See id.* at ¶ 37 n.29 & Ex. 3.).

3. The Debtors also argue that those cases cited by the RMBS Trustees that have approved statistical sampling either involve allegations brought by monoline insurers, erroneously rely on cases involving monoline insurers, or, the courts in question ignore the underlying contractual obligations that do not permit sampling. (*Debtors' Reply Br.* at ¶¶ 42-45.)

4. These arguments, however, are the exact arguments made by the parties opposing sampling in the *MASTR* and the *Home Equity* cases. In both instances, the courts were presented with a letter from the defending parties, asserting substantially identical arguments to those presented by Debtors here. (*See* Lewis Dec. at Ex. 1 & 2.) The orders entered in *MASTR* and *Home Equity* (and the letters on which those orders are based (which are attached hereto for this Court's review)) clearly indicate that the monoline cases are persuasive authority with respect to a trustee's put-back claims and support the use of sampling in RMBS cases. (*See id.*).

5. Thus, the RMBS Trustees have filed this Supplement to the RMBS Trustees' Motion to provide this Court with the appropriate background information -- namely the relevant letters submitted to the courts for the *MASTR* and *Home Equity* cases that directly contradict the Debtors' Reply. (*See* Exhibits 1 & 2 to the Lewis Declaration, Exhibit A, attached hereto.) The underlying letters for each case also show that these two courts disregarded almost identical arguments to those presented by Debtors here. These letters are attached as Exhibits 1 and 2 to the Lewis Declaration, attached as Exhibit A to this Supplement.

December 8, 2014  
New York, New York

Respectfully Submitted,

/s/ Franklin H. Top III  
Franklin H. Top III (admitted *pro hac vice*)  
Scott A. Lewis (admitted *pro hac vice*)  
CHAPMAN AND CUTLER LLP  
111 West Monroe Street  
Chicago, Illinois 60603  
Telephone: (312) 845-3000

*Counsel for U.S. Bank National Association,  
solely in its capacity as Indenture Trustee for  
Certain Mortgage-Backed Securities Trusts*

/s/ Grant T. Stein  
John C. Weitnauer (admitted *pro hac vice*)  
Grant T. Stein (admitted *pro hac vice*)  
ALSTON & BIRD LLP  
1201 West Peachtree Street  
Atlanta, Georgia 30309  
Telephone: (404) 881-7000

*Counsel for Wilmington Trust Company and  
Wilmington Trust, National Association, each  
solely in its capacity as Trustee for Certain  
Mortgage-Backed Securities Trusts*

/s/ M. William Munno  
M. William Munno  
SEWARD & KISSEL LLP  
One Battery Park Plaza  
New York, New York 10004  
Telephone: (212) 574-1587

*Counsel for Law Debenture Trust Company of  
New York, solely in its capacity as Separate  
Trustee for Certain Mortgage-Backed  
Securities Trusts*

/s/ Richard C. Pedone  
Richard C. Pedone (admitted *pro hac vice*)  
Christopher Desiderio  
NIXON PEABODY LLP  
437 Madison Avenue  
New York, New York 10022  
Telephone: (212) 940-3085

*Counsel for Deutsche Bank National Trust  
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